UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

KAISER FOUNDATION HEALTH PLAN
OF THE MID-ATLANTIC STATES, INC.

Employer

and Case 5-RC-15903

NATIONAL NURSES ORGANIZING COMMITTEE/
CALIFORNIA NURSES ASSOCIATION (NNOC/CNA)

Petitioner

and

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 400, AFL-CIO

Intervenor

DECISION AND ORDER

The sole issue presented in this matter is whether the collective-bargaining agreement between United Food and Commercial Workers Union, Local 400, AFL-CIO, CLC ("Intervenor") and Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. ("Employer") operates as a contract bar to the petition filed by the National Nurses Organizing Committee/ California Nurses Association ("Petitioner") on August 25, 2005.[1] Deciding that issue is contingent on answering the following: (1) has the Intervenor and/or Employer provided sufficient evidence that a collective-bargaining agreement was reached that contains substantial terms and conditions of employment; (2) does the agreement contain express language requiring

[1] All dates herein refer to 2005, unless otherwise noted.

ratification before the agreement is officially executed; and (3) was the agreement executed and in effect prior to the filing of the instant petition on August 25, 2005.

All parties stipulated that the Intervenor has represented the employees at issue since the late 1980s. The Intervenor and Employer contend that they formed and executed a contract sufficient to operate as a bar to election on August 19, 2005, prior to Petitioner filing the petition herein. As such, the Intervenor and Employer argue that said petition should be dismissed.

The Petitioner argues that the documents relied on by the Intervenor and Employer fail to constitute a valid collective-bargaining agreement, and that the Board should draw an inference based on certain extrinsic evidence that ratification by union membership is a precondition to any executed agreement. The Petitioner argues that such an inference should be drawn because the Employer and Petitioner have failed to produce a copy of the signed national agreement, which is incorporated by reference in the overall agreement that the Intervenor and Employer contend constitutes a contract bar.

I have carefully considered the evidence and arguments presented by the parties on these issues. As discussed below, I conclude that the Intervenor and Employer have met the burden of establishing the existence of a contract bar to the petition. The Intervenor and Employer have demonstrated that they reached a valid collective-bargaining agreement, and the terms of the agreement were reduced to a writing prior to the time the Petitioner filed its petition. In addition, the evidence fails to show that the parties entered into any express written agreement requiring ratification by union membership as a precondition to a fully executed agreement.

The Intervenor presented testimony from its President, C. James Lowthers. The Employer presented testimony from its Director of Human Resources, Charles V. Phillips. The Petitioner presented testimony from unit employee Lorraine Ondrasik, Attorney Mark Reynolds,

and unit employee Nicole Miller; in addition, Petitioner recalled Director of Human Resources Charles Phillips as its witness on direct.

FACTUAL SETTING

The Intervenor has been the exclusive representative of a unit[2] of Employer's employees providing health care services at facilities throughout Washington, DC, Maryland, and Virginia since about 1987. The most recent collective-bargaining agreement entered into between the Intervenor and Employer has a stated term of August 19, 2005 through December 11, 2012. In reaching that agreement, the Intervenor and the Employer voluntarily reopened negotiations during the life of the predecessor agreement, which had a term of October 1, 2000 through December 11, 2007. This collective-bargaining agreement (Intervenor's Exhibit 1) consisted of two parts: (1) the Local Agreement which was negotiated between the Intervenor and the Employer; and (2) the national agreement which was negotiated between Kaiser Permanente Partnership Group ("KPPG") and the Coalition of Kaiser Permanente Unions ("CKPU").

The Employer and the Intervenor entered into negotiations for a successor collective-bargaining agreement in 2005. The first stage of negotiations was between KPPG and CKPU for the national agreement. Those negotiations were concluded on August 6, 2005, and the terms of the national agreement were summarized in a presentation to the CKPU's Delegates Council on

[2] The parties stipulated, and I find, that the appropriate unit herein is as follows:

> All regular full-time and regular part-time certified registered nurse anesthetists, clinical audiologists, medical technologists, physician assistants, nutritionists, nurse practitioners, registered nurses, nurse midwives, all other professional nurses, other mutually-agreed upon professionals, mental health professionals and substance abuse counselors whose positions require a Master's Degree but not a Ph.D. Degree, employed by the Employer at the Employer's facilities in the District of Columbia, Maryland, and Virginia; and excluding all other employees, nurse coordinators, guards, supervisors, and casual employees, and also excluding employees employed at any of the Employer's facilities in the Baltimore metropolitan area.

August 7 and in the August 12 issue of a joint publication by the Employer and the CKPU entitled "At the Table." (Petitioner's Exhibit 2). [3]

Negotiations between the Employer and the Intervenor began on August 16. The parties used as a template the terms of the predecessor agreement. (Intervenor's Exhibit 1). In keeping with the past negotiating practices, where the parties to the agreement did not expressly agree to modify terms of the predecessor agreement, the unchanged terms of that earlier agreement were carried over into the new contract.

At the culmination of negotiations on August 19th, the parties reached an agreement with respect to the modifications of the predecessor agreement. (Intervenor's Exhibit 2). Those modifications were signed off on and dated by the representatives of the Intervenor and Employer. Later that same day, to document the new agreement, the parties signed and dated an "Acknowledgement of Collective Bargaining Agreement" (Intervenor's Exhibit 3). The new collective-bargaining agreement is comprised of the provisions of the prior agreement as modified by the parties (Intervenor's Exhibits 1 and 2); the terms of the national agreement as agreed to by KPPG and CKPU on August 6 (Intervenor's Exhibit 4, Petitioner's Exhibit 2); and the "Acknowledgement of Collective Bargaining Agreement." No further negotiations took place after August 19. The recently negotiated local and national portions of the agreement have not yet been reduced to a final, publishable form.[4]

The Petitioner filed its petition herein on August 25. Two days after the filing of that petition, on August 27, the Intervenor presented the successor collective-bargaining agreement to the union membership for ratification.

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[3] The terms are also set forth in Intervenor's Exhibit 4.

[4] I note that after examining the predecessor agreement (Intervenor's Exhibit 1), which is an 87-page bound document, it is not at all surprising that at the time of the Hearing in this matter the Intervenor and Employer had not yet reduced all of the agreed-upon terms to that form.

INTERVENOR'S AND EMPLOYER'S POSITION

The Intervenor presented Exhibits 1 through 4 that it posits constitute the current collective-bargaining agreement, and which it asserts serves as a bar to the Petitioner's petition.

Intervenor's Exhibit 1 is a copy of the predecessor agreement consisting of the signed, dated Local Agreement as well as an unsigned national agreement that is attached as an addendum thereto. The Intervenor and Employer assert that the predecessor agreement was used as a template for its negotiations to reach the successor agreement. Those parties further assert that unless specifically modified by local negotiations, the unchanged terms of the predecessor agreement remain in effect.

Intervenor's Exhibit 2 consists of the terms and conditions where the parties negotiated and agreed to specific modifications of the predecessor agreement. Each of the individual provisions agreed upon in that exhibit is signed by party representatives and dated August 19.

Intervenor's Exhibit 3 is the parties' acknowledgement of the local collective-bargaining agreement as contained in Intervenor Exhibits 1 and 2, signed by the parties on August 19, which incorporates by reference the national agreement reached between KPPG and CKPU. The Intervenor explained that the national portion of the agreement is not in and of itself a "collective-bargaining agreement" but rather is a set of various terms and conditions of employment that is presented to parties to the various local agreements for potential inclusion in their agreements. The Intervenor and Employer stressed that this national portion of the agreement does not have any effect unless, and until, it is incorporated by the local parties into their own collective bargaining agreements. That principle is set forth in Section 3 (B) p. 85 of the national portion of the predecessor agreement, which in pertinent part states as follows:

> …This National Agreement applies only to bargaining units represented by Local unions that Kaiser Permanente and the Coalition of Kaiser Permanente Unions mutually agreed would participate in the national common issues bargaining process and who, prior to the effective date, agreed to include this National Agreement as an addendum to their respective Local collective bargaining agreements. …

The Intervenor and Employer argue that upon signing and dating the "Acknowledgement of Collective Bargaining Agreement" they satisfied the steps necessary to incorporate the terms of the revised national agreement, as well as, the revised Local Agreement. The parties argue that the terms of the national agreement can be found either in the Summary of Contract Terms set forth in the article titled "At the Table," (Petitioner's Exhibit 2) or in the outline presented in power-point form (Intervenor's Exhibit 4).

The Intervenor and Employer argue that all of the above-described exhibits, taken as a whole, constitute a valid collective-bargaining agreement.[5] Again, they contend that the applicable collective-bargaining agreement for contract-bar purposes consists of the following: (1) the unchanged provisions of the predecessor agreement (Intervenor's Exhibit 1); (2) the agreed-upon changes to the local provisions of the predecessor agreement (Intervenor's Exhibit 2); (3) the revised national portion of the predecessor agreement (Intervenor's Exhibit 4); and (5) the "Acknowledgment of Collective Bargaining Agreement" which ties the above documents together.

Those parties further argue that as those exhibits do not contain any express language requiring employee ratification or any other language that would limit the parties' authority to enter into a binding agreement, it is clear that the Intervenor and Employer executed a full and complete agreement on August 19, six days prior to the Petitioner filing its petition. They note

[5] It should also be noted that the parties have not entered into any continued negotiations subsequent to the August 19th signing of the "Acknowledgment of Collective Bargaining Agreement."

that Intervenor's president, Lowthers, testified there is no requirement of ratification contained anywhere in the agreement, and that when further questioned about this issue on cross-examination by the Petitioner, Lowthers stated that he had taken part in negotiations on the national level and that, aside from there being no express contractual requirement for ratification, he did not even recall any discussion about ratification. Therefore, according to the Intervenor and Employer, the Board should find that a contract bar exists prohibiting further processing of this petition.

PETITIONER'S POSITION

The Petitioner contends that the Intervenor has failed to carry its burden that a contract bar exists, and, therefore, the Board should process the petition and direct an election. In support of its position that the evidence is insufficient to find a contract bar, Petitioner first argues that the Intervenor and Employer provided insufficient evidence of a document that expressly sets forth adequate terms and conditions necessary to form a full and complete contract. Petitioner argues in the alternative that the national agreement contains more of the basic terms and conditions of employment than the Local Agreement, and that because the document submitted into evidence by the Intervenor that purports to constitute the national agreement is unsigned, it cannot serve as a bar to the petition. Petitioner also argues that because the Intervenor and Employer failed to present a signed copy of the national agreement, the Board should consider certain secondary evidence, as set forth in Petitioner's Exhibits 2 through 5, in reaching a determination that ratification by the union membership is a condition precedent to a finalized agreement.

Petitioner's Exhibit 2 is a printout of a website article published by the Employer and the Coalition of Kaiser Permanente Unions,[6] titled "At the Table," that unit employees received via e-mail. The Petitioner offered the exhibit as secondary evidence that ratification is a condition precedent to a finalized agreement. The Petitioner specifically highlighted the last two sentences of the fourth full paragraph of the first page, which discusses what happens with the national agreement after negotiations at the national level:

> The contract then goes to the Kaiser Foundation Health Plan/ Hospitals' Boards of Directors for approval on Sept. 12-14. Finally it goes to the 81,000 members of the Union Coalition for ratification by the membership of each local Union Sept. 10-30.

The Petitioner contends that the above-cited portion of Petitioner's Exhibit 2 is relevant in the absence of a signed copy of the national agreement, as secondary evidence that ratification is a condition precedent to a final agreement.

Petitioner's Exhibit 3 is a document dated August 27, identified as the Employer's "Final and Complete Offer." The Intervenor handed this document out to its membership at a union meeting. The Petitioner argues that this document is relevant because it shows that the Intervenor presented a proposed agreement to its membership subsequent to the Petitioner's petition that was filed on August 25. Petitioner's witness Nicole Miller, a unit employee, testified that she was present at the union membership meeting when Petitioner's Exhibit 3 was handed out. Miller testified that President Lowthers addressed the unit at that meeting and announced that the members would have the opportunity to vote to ratify the contract, and that if the members voted no, he would call for a strike vote immediately. Miller further testified that at no time did Lowthers indicate that the agreement was final regardless of their vote.

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[6] The Coalition is comprised of different unions representing Kaiser employees at all of its facilities.

Petitioner's Exhibit 4 is a Complaint filed in state court by the Intervenor on August 22 against the Petitioner and another entity for libel. The Petitioner claims that the relevance of this document is found in Paragraph 9 of the Complaint, which provides as follows:

> 9. Local 400 is currently engaged in negotiations with Kaiser for a new collective bargaining agreement in an effort to provide for improved wages, benefits, and terms and conditions of employees who work as nurses and other health care professionals.

The Petitioner argues that the above-quoted language is relevant because it shows that as of August 22, the date the Complaint was filed, the Intervenor considered negotiations to be ongoing, which is inconsistent with any finding that a final agreement was entered into on August 19.

Petitioner's Exhibit 5, like Petitioner's Exhibit 2, is a printout of a website article titled "At the Table" published by the Employer and the Coalition of Kaiser Permanente Unions. The Petitioner offered this exhibit because it is an even more recent article than is Exhibit 2, and constitutes continuing evidence that the CKPU plans to present the national agreement for employee ratification in September. Petitioner again argues that such secondary evidence is relevant to show that the Intervenor and Employer had not reached a final local agreement before Petitioner filed its petition herein.

ANALYSIS AND CONCLUSIONS

For the reasons that follow, and after careful consideration of the totality of the record evidence and the legal positions set forth in the transcript and in the parties' post-hearing briefs, I find that the Intervenor and the Employer have established that a contract exists barring further processing of Petitioner's petition in this matter. Reaching that conclusion requires a resolution to the questions that were presented at the outset, including: (1) whether the Intervenor and Employer reached agreement with respect to essential terms and conditions of employment; (2)

whether the parties expressly agreed to require ratification by the union membership as a condition precedent to a finalized agreement; and (3) whether assuming a valid contract exists, its effective start date precedes the Petitioner's August 25th petition.

I conclude that the Employer and Intervenor have demonstrated that sufficient and substantial terms and conditions of employment exist to constitute a valid collective-bargaining agreement with an effective start date of August 19th, six days prior to the filing of the petition in this matter. I have also determined that the Petitioner has failed to demonstrate that the parties negotiated or that any express contractual language exists requiring union membership ratification as a condition precedent to a finalized agreement.

Deciding the sole issue in this matter as to whether a contract bar exists requires application of the Board's longstanding precedent on this issue. In *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958) and its progeny, the Board recognized that before a contract bar can be found, the party asserting the doctrine has the burden of proving[7] that the following criteria are present: (1) the contract must be reduced to writing; (2) it must be signed by all parties prior to the filing of the petition; (3) it must contain substantial terms and conditions of employment to stabilize the bargaining relationship in its day-to-day operations; (4) it must by its terms cover the employees involved in the petition; and (5) it must cover an appropriate unit.

As discussed below, I find that the Intervenor and Employer have satisfied their burdens of proving the existence of a contract bar and have presented sufficient documentary and testimonial evidence that satisfy all of the above factors.

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[7] *Roosevelt Memorial Park*, 187 NLRB 517 (1970) (the burden of establishing a contract bar is on the party asserting the doctrine).

Intervenor's Exhibits 1-4 Constitute a Valid Contract

The Board has long held an agreement "need not be embodied in a formal document." An informal document or documents, such as a written proposal and a written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient, if signed. *Appalachian Shale*, 121 NLRB at 1162; *Georgia Purchasing*, 230 NLRB 1174 (1977). Although inclusion of substantial terms and conditions of employment in an agreement is one of the factors necessary for a finding of contract bar status, there is no checklist of terms that the Board looks to in reaching a determination as to whether this factor is satisfied. Rather, as the Board explained in *Appalachian Shale*, a contract will be construed as valid if it contains terms "sufficient to stabilize the bargaining relationship." Id.

The parties reduced the agreed-upon contract terms, covering the unit as set forth in Article 1 of the predecessor local agreement,[8] to written form, as evidenced in Intervenor's Exhibits 1, 2, and 4.[9] The parties to that agreement signed and dated the "Acknowledgement of Collective Bargaining Agreement" on August 19th, six days prior to the filing of the petition herein.[10] Although the terms of the signed Acknowledgement do not expressly incorporate the predecessor agreement (Intervenor's Exhibit 1), the Board has found that such specific language of incorporation is not necessary where recently negotiated modifications would "have meaning

[8] The Unit set forth in Article 1 of Intervenor's Exhibit 1 mirrors the unit that Petitioner petitioned-for in Board Exhibit 1(a), thus satisfying the fourth factor necessary to establish a contract bar as cited above.

[9] Intervenor's Exhibit 4 is a power-point presentation summary outline of the terms agreed to with respect to the national portion of the agreement.

[10] The Petitioner contends that as the national agreement contains more of the basic terms and conditions of employment than does the Local Agreement, it should be the document scrutinized for a determination as to whether a bar exists. I find that the Intervenor sufficiently explained that the national agreement is not a collective-bargaining agreement in and of itself. Rather, the terms of that national agreement can be adopted by parties to local agreements, with whatever modifications the parties to the Local Agreement deem necessary (Intervenor's Exhibit 2). Similarly, the predecessor local agreement (Intervenor's Exhibit 1) can be adopted to whatever extent the parties to the new local agreement desire. Then, all of the documents taken as a whole constitute the new Local Agreement whose effective date is set forth in the "Acknowledgement of Collective Bargaining Agreement" signed by the parties on August 19 (Intervenor's Exhibit 3).

only when read in conjunction with the expired contract." In such cases, the Board concluded that an "agreement is subject to interpretation that it incorporates by reference the prior contract." *Thiokol Corporation*, 215 NLRB 908, 909 (1974) (See also, *The Bendix Corp.*, 210 NLRB 1026, 1027 (1974)). Consistent with the Board's finding in that case, I conclude that the facts in the instant case also lend themselves to a finding that the agreed-upon modifications (Intervenor's Exhibit 2) only make sense when juxtaposed with the predecessor agreement (Intervenor's Exhibit 1). In fact, several times in Intervenor's Exhibit 2 the language makes mention of provisions in the predecessor agreement. [11]

After an inspection of the documents that Intervenor presented as constituting the applicable collective-bargaining agreement, I find that the terms set forth in Intervenor's Exhibit 1, as modified by its Exhibits 2 and 4, constitute a comprehensive agreement covering substantial mandatory and permissive subjects of bargaining. Petitioner's argument that Intervenor's Exhibit 1 should be examined as a distinct document from those other documents is misguided. The Intervenor and Employer demonstrated a long history of negotiations whereby predecessor agreements, such as Intervenor Exhibit 1, are used as a "template" whereby the parties' negotiations concern only proposed modifications thereto. Once the modifications are agreed upon by both parties, as evidenced by Intervenor's Exhibit 2, the remaining unchanged terms of the predecessor agreement are incorporated. I find that it is sufficient that the parties to the agreement signed and dated a document (Intervenor's Exhibit 3) that acknowledges the documents that comprise the full and complete agreement.[12]

[11] Such references in Intervenor's Exhibit 2 back to the predecessor agreement include language indicating that the parties agree, for example, to keep Article 5.2, "Additional Hours," the same.

[12] In support of its argument that the Intervenor and Employer have failed to present sufficient evidence that a contract bar exist, the Petitioner cites *Waste Management of Maryland, Inc.*, 338 NLRB 1002 (2003), in which the Board, absent any supporting documentation concerning the actual terms of the agreement and without a single document other than the acceptance letter, refused to find a contract bar. Those facts are clearly distinguishable

The Board has stated that whether the agreed-upon terms sufficiently stabilize the bargaining relationship is decided by whether employees are able to "look to actual terms and conditions of their contract for guidance in their day-to-day problems." *Appalachian Shale*, 121 NLRB at 1163. With respect to the Board's interest in promoting stability in the bargaining relationship, I take notice of the fact that the Intervenor has represented the unit employees for approximately twenty years, and during that period has successfully negotiated with the Employer, in the same manner that it has in this case, a series of comprehensive collective-bargaining agreements covering that unit.

With respect to the final element necessary to establish a contract bar, the unit that is covered by the collective-bargaining agreement and that is the subject of the petition in this matter, is an appropriate unit as evidenced by the fact that the unit was certified as such by this Region in Case 5-RC-10792, has existed for many years, and is the unit contained in the predecessor collective-bargaining agreement.

Ratification Is Not a Condition Precedent

Having concluded that the Intervenor and Employer established that they negotiated a valid collective-bargaining agreement, and thereby dismissing Petitioner's first argument, I turn to the Petitioner's alternative argument that I should infer the existence of a ratification requirement as a condition precedent to the finalization of any collective-bargaining agreement between the parties. Essentially, the Petitioner argues that without being afforded the opportunity to inspect an actual signed national agreement, it is not possible to know whether the parties agreed to such a precondition and, therefore, one should be inferred. I disagree.

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from the facts of the instant case, where the Intervenor and the Employer have presented all of the documents, as well as supporting testimony, of the specific terms that make up the August 19 Agreement.

Unlike the positive obligations enumerated above, which are necessary to show contract formation under the contract bar doctrine, ratification of an agreement by union membership is not a condition precedent to contractual validity, unless, the parties make it so by express contractual provision. *Appalachian Shale*, 121 NLRB at 1163; see also, *United Health Care Services*, 326 NLRB 1379 (1998). In finding a ratification requirement as a precondition to a finalized agreement, the Board has also taken notice of the parties' bargaining history and whether there has been a pattern of contracts being regarded as finalized only after tentative agreements have been ratified. See, e.g. *Brotherhood of Painters, Local No. 1385 (Associated Bldg. Contractors of Evansville)*, 143 NLRB 680 (1963). In deciding whether a ratification requirement to exist, the Board will also consider whether the union has communicated to the employer a limitation on its authority to enter into a binding agreement absent, for example, prior ratification by the union membership. See, e.g. *Sunderland's Inc.*, 194 NLRB 118, fn. 1 (1971).

Absent evidence of a patent agreement regarding prior ratification, however, the Board will not infer ratification as a condition precedent to a finalized agreement. In fact, in the wake of *Appalachian Shale*, the Board has consistently found that absent an express agreement between the parties, ratification is merely a "gratuitous process which union negotiators have imposed upon themselves…" *Merico, Inc*., 207 NLRB 101 (1973).

In the instant case, I find that the contract is silent with respect to ratification. In addition, the Petitioner has failed to establish that ratification has in any way been expressly negotiated. Likewise, I find that there is no pattern or bargaining history related to this subject that would support a finding of a prior ratification requirement. In fact, to the contrary, the previous contract between the Intervenor and the Employer contains no language whatsoever, in either the national agreement or the local agreement, regarding a ratification requirement. As for

the testimony of Petitioner's witness regarding the union meeting that was held for the purpose of voting whether to ratify the agreement, I find, absent express contractual language or evidence that the parties negotiated such a requirement, that the vote was merely a gratuitous process and did not prohibit the Intervenor and Employer from entering into a finalized agreement on August 19. Ibid.

Similarly, Petitioner's exhibits offer little more than parol evidence that the Intervenor engaged in gratuitous activities when it distributed to its membership e-mails regarding ratification and when it actually held a ratification vote on August 27. In keeping with the policy considerations set forth in *Appalachian Shale*, namely avoiding litigation of factual issues such as those related to an examination of parol evidence, I find that the Intervenor and Employer entered into a valid contract on August 19, prior to the filing of the petition. I further find that neither the contract nor any other evidence of express agreement exists that requires a prior ratification by employees or any other condition precedent to the parties' authority to execute that agreement. Based on all of the testimonial and documentary evidence, I find that a contract does exist, that it meets the Board's contract-bar standards, and that it was not subject to employee ratification as a condition precedent to its validity. Accordingly, I am dismissing the petition in this matter.

ORDER

The petition is dismissed.

NOTICE OF ELECTRONIC FILING

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **OCTOBER 11, 2005**. The request may not be filed by facsimile.

(SEAL) ALBERT W. PALEWICZ

Dated: SEPTEMBER 27, 2005

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